

THE FEDERAL TORT CLAIMS ACT

If a government employee is involved in a motor vehicle accident, the injured party may be entitled to file a claim for damages under the Federal Tort Claims Act. The act provides that a plaintiff may bring a civil action against the United States for money damages for injury or loss of property, or personal injury or death. The injury claimed must have been caused by the negligent or wrongful act or omission of an employee of the federal government while acting within the scope of his or her employment under circumstances where the United States, if a private person, would be held liable to the claimant in accordance with the law of the place where the act or omission occurred. 28 U.S.C. §§ 1346(b), 1402(b), 2401(b), and 2671-2680.

(1). Negligence

In order to determine whether the actions of a federal employee were negligent or wrongful, the law of the place in which the accident occurred must be applied. Thus, if the accident occurred in California, then California law would apply or if the accident occurred in the District of Columbia, then District of Columbia law would apply.

Some states provide for comparative and/or contributory negligence. This may affect the amount of damages that a claimant is entitled to recover. For example, if it is determined that a government employee was 70% responsible for a motor vehicle accident and the claimant was 30% responsible for the accident, the claimant may be allowed to recover only 70% of his total damages.

(2). Employee

The actions of independent contractors are not covered by the Federal Tort Claims Act. In determining whether an individual is an employee or independent contractor, it is necessary to examine whether the government controls the individual's day-to-day activities. If it is determined that the individual is an independent contractor, he is not covered under the FTCA; Consequently, the federal government is not liable for his actions.

(3). Scope of Employment

The actions of a government employee are covered only if the employee was acting within the scope of his or her employment at the time of the accident. The law of the place in which the accident occurred is applied when determining whether the employee was acting within the scope of his or her employment. For example, New York law provides that an individual is acting within the scope of his employment (1) when his action is in furtherance of the duties that he owes to his employer and (2) where the employer is exercising some control, either directly or indirectly, over the employee's activities. See *Pitt v. Matola*, 890 F. Supp. 89, 92 (N.D.N.Y. 1995). The following are some examples of how New York law might apply:

Example 1: Fred is a government employee who works in the state of New York and his primary duty is to transport other government employees via shuttle van from government facility A to government facility B. While transporting employees from facility A to facility B, Fred rear-ends the car in front of him. Under New York law, it appears that Fred was acting within the scope of his

employment at the time of the incident. By transporting the government employees, Fred was acting in furtherance of his duties at the time of the accident and the government was exercising some control over his activities.

Example 2: While driving his normal route and transporting employees from facility A to facility B, Fred decides to stop at McDonald's to pick up some lunch. While in the parking lot at McDonald's, Fred backs the shuttle van into a parked car. The issue of whether Fred was acting within the scope of his employment under New York law becomes a bit more difficult. The argument could be made that stopping off at McDonald's for lunch was not in furtherance of Fred's duties.

Example 3: After finishing his final transport for the day and after the end of his normally scheduled work day, Fred decides to assist his friend who is moving to a new home. Fred drives the shuttle van to his friend's house and loads it up with some of his friend's belongings. While driving to his friend's new home, Fred runs a red light and crashes into a car. It seems clear that under New York law, Fred was not acting within the scope of his employment at the time of the accident. Consequently, Fred's actions would not be covered by the Federal Tort Claims Act and it is possible that he could be held personally liable for the accident.

(4). Damages

The law of the place in which the accident occurred must be consulted when determining the amount of damages to which a claimant is entitled. In the context of motor vehicle accidents, lost wages, medical expenses, and property damages are just some of the damages that a claimant may be allowed to recover.

(5). Procedural Requirements

All claimants must file an administrative claim with the appropriate federal agency before filing an action against the United States in federal court. The claim must be filed within two years of the accident and must list the specific amount of damages being sought. The agency is allowed six months in which to review the claim. If the agency fails to make a final determination on the claim during those six months, the claimant may file suit in the appropriate federal district court after the six months have expired.

Claims involving the actions of employees of the Department of Health and Human Services should be directed to:

Claims Branch
Program Support Center, Division of Acquisition Management, AOS
Room 5C-10, Parklawn Building
5600 Fishers Lane
Rockville, MD 20857